

JUL 03 2006

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Today's Date: July 3, 2006

To: Examiner H. Jey Tsai, Art Unit: 2812

FAX: (571) 273-8300

**From: Frederick E. Cooperrider #36,769
McGinn IP Law Group, PLLC
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In re Application of Doris, et al

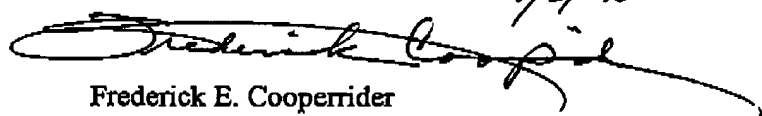
Serial No.: 10/710,272

For: METHOD AND STRUCTURE FOR STRAINED FINFET DEVICES

Contents: 1. Petition to Withdraw Finality as Premature (2 pages)

CERTIFICATION OF TRANSMISSION

I certify that I transmitted via facsimile to (571) 273-8300 this Petition to Withdraw Finality as Premature to Examiner H. Jey Tsai on July 3, 2006.

07/03/06

**Frederick E. Cooperrider
Reg. No. 36,769**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Doris, et al

Serial No.: 10/710,272

Group Art Unit: 2812

Filed: June 30, 2004

Examiner: Tsai, H. Jey

For: METHOD AND STRUCTURE FOR STRAINED FINFET DEVICES

Commissioner for Patents
Alexandria, VA 22313-1450

**PETITION TO WITHDRAW FINALITY OF REJECTION AS PREMATURE
UNDER 37 C.F.R. §1.181**

Sir:

Applicants respectfully petition under 37 C.F.R. §1.181 that the finality of the above-referenced Application be withdrawn as premature under the guidelines of MPEP §706.07(a). This guideline states: "... second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims" (Emphasis by Applicants).

Applicants respectfully submit that, contrary to the Examiner's implied position in the latest Office Action mailed May 2, 2006, it can hardly be said that the claim amendments (e.g., no claim amendments) in the Amendment Under 37 C.F.R. §1.111, filed on December 7, 2005, were in any way directed to the purpose of overcoming the rejection of the Office Action dated September 7, 2005, based on US Patent Publication No. 2004/0259315 to Sakaguchi et al. Applicants submit that no claim amendments were necessary to overcome this rejection, since

S/N: 10/710,272

Petition to Withdraw Finality as Premature

2

Applicants' response was a swearing behind of this reference, using a Rule 131 Declaration.

As clearly pointed out in MPEP §706.07: "*Before final rejection is in order a clear issue should be developed between the examiner and applicant.... The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application.... The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal.*"

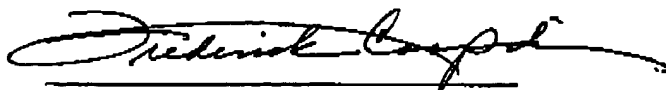
(Emphasis Applicants')

It is clear that the Examiner has simply substituted a new reference that Applicants had not yet evaluated in view of a formal rejection.

For at least the reasons outlines above, Applicant petitions that the finality of rejection for the above-identified Application be withdrawn.

Respectfully submitted,

Date: 7/03/06



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Attorney Docket: FIS920030389US1 (FIS.082)